

REMARKS

Claims 1, 5, and 7-24 remain in this application. Claims 2-4 and 6 were previously canceled. Claims 1 and 16 are hereby amended. All other claims remain the same. Reconsideration of the claims as presented is requested.

Applicants acknowledge with appreciation the courtesies extended to Mr. Barsade and the undersigned during the telephone interview of August 25, 2010, during which the merits of the office action were discussed. The disclosure of Agee was discussed in detail, in particular as regards the definition of “third party service provider” and “gateway” in Agee. Examiner identified the alternate embodiment of FIG. 7B in Agee, wherein the “gateway” is bypassed and the “merchant computer” communicates directly with the “third party service provider” computer, which communicates directly with the “tax service provider” computer and the financial network, as being closest to the currently claimed invention. Examiner acknowledged the confusing use of the term “third party service provider” by Agee. Examiner acknowledged that, in the alternate embodiment, the “third party service provider” had to be renamed as the “gateway”, and the “tax service provider” had to be renamed as the “third party service provider”, in order to arrive at the instantly claimed invention. Examiner argued that his renaming of the Agee elements was supported by the manner in which Agee uses the terms “gateway” and “third party service provider”. No agreement as to allowability of the claims was reached.

Claims 1, 5, 7-20 and 24 stand rejected under 35 U.S.C. 112, 2nd para. as being indefinite. Examiner requests clarification of claims 1, 5, 7-20 and 24 as to whether the claims cover a system or software. Regarding claim 16, Examiner indicates that the system is missing a step concerning what step(s) would occur if the condition specified in the claim is met, since the claim already specifies what would occur when the conditions are not met. Insofar as it may apply to the present claims, this rejection is traversed.

Claim 16 has been amended as suggested by Examiner.

Claim 1 has been amended to specify the system comprises various different nodes with each node comprising its respective logic engine or gateway. The form of claim 1 has been amended to be more akin to the “system” claim exemplified by Examiner in the office action.

Applicants respectfully submit that this rejection has been overcome and request that it be withdrawn.

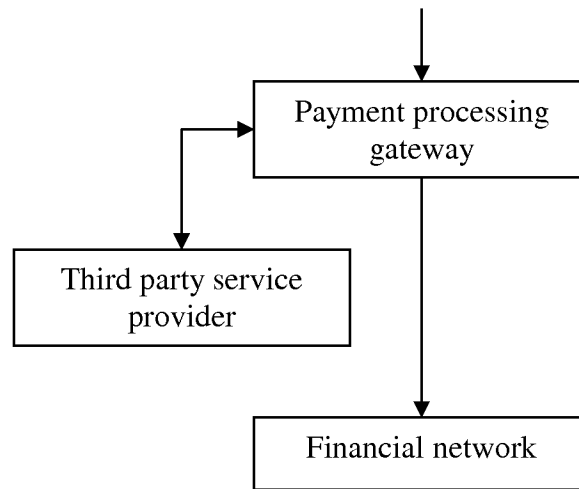
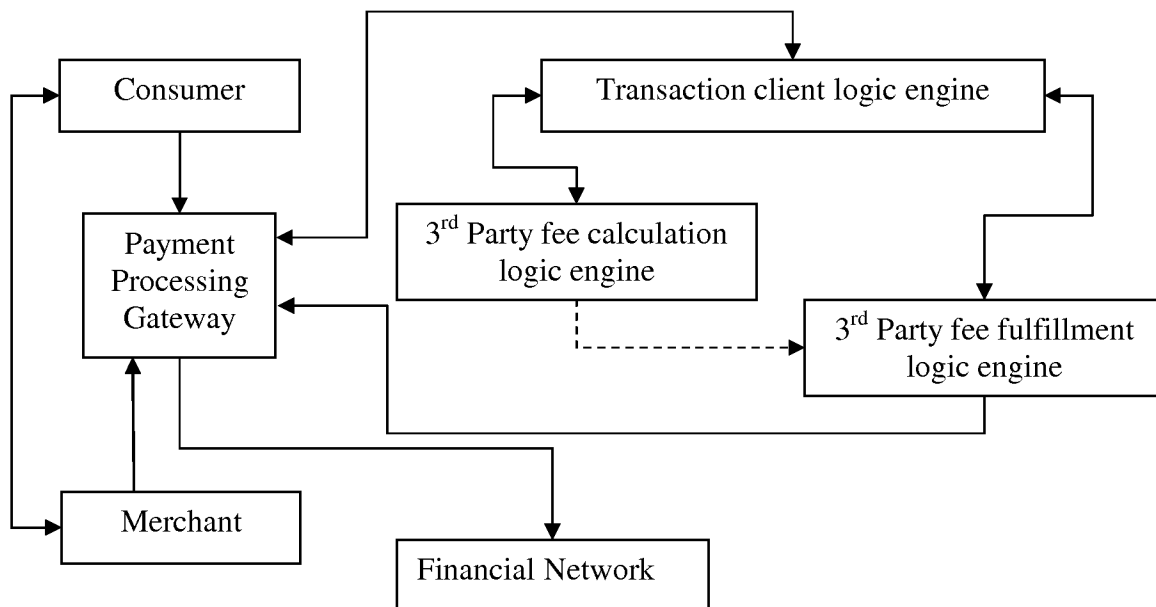
Claims 1, 5 and 7-24 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Sullivan (U.S. Publ. 2003/0093320) in view of Agee et al. (U.S. Publ. 2003/0097303). Examiner has relied upon but not reiterated his prior arguments of record and has rebutted Applicants' most recent arguments. Examiner has also kindly provided (para. 9, pages 5-6 of the office action) a "productive avenue for future arguments" for overcoming this rejection. Insofar as it may apply to the present claims, this rejection is traversed.

Examiner relies upon his prior definition of "payment processing gateway" and of "third party service provider" as used by Agee. Examiner then argues (telephone interview) that the alternate embodiment of FIG. 7B, which does not include a "gateway", and instead includes the "third party service provider" between the "merchant" computer and the financial network, is the embodiment that most closely resembles the instant claimed invention.

Applicants' prior comments of record are equally applicable and are incorporated herein by reference. Applicants respectfully submit that Examiner has indeed misconstrued the term "third party service provider" as used by Agee and, as a result, has deemed the instant claims obvious over the prophetic combination of references.

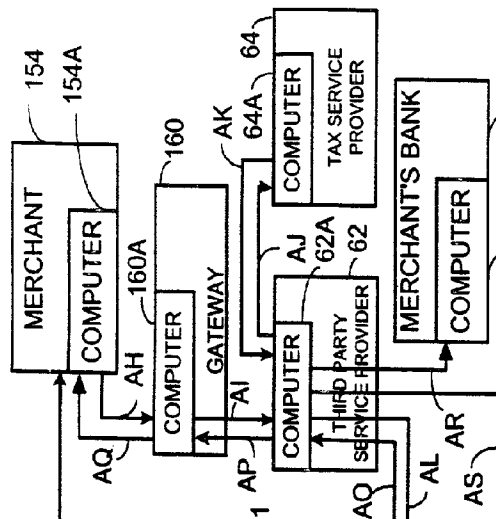
As Applicants have previously argued, it is true that one must consider the function of a prior art element in determining its relevance to an element included in one's claim(s); however, one cannot assume that the required features of one element (the payment gateway) can be or is indeed taken over by another element (the third party provider). This is especially true when the art of record clearly and separately identifies the two different elements and even includes embodiments wherein both elements are present and wherein one element is bypassed.

Prior to addressing the construction of Agee's use of the terms "gateway" and "third party service provider", Applicants note that the instant claims cover a system which can be described pictorially with the following two diagrams.

Generalized Instant InventionMore Detailed Claim 1

Applicants note that the generalized “third party service provider” is actually a combination of three different components in claim 1: the transaction client logic engine, 3<sup>rd</sup> party fee calculation logic engine and 3<sup>rd</sup> party fee fulfillment logic engine.

Examiner argues that the following embodiment of Agee (FIG. 7B; except that the “gateway” is bypassed) is material to patentability.



In the alternate embodiment, the “third party service provider” of Agee would presumably communicate directly with the merchant computer, the tax service provider computer and the financial network (generalized term). As a result, Examiner equates the “third party service provider” of Agee with the instant “gateway” and the “tax service provider” of Agee with the instant “third party service provider”.

Applicants respectfully submit that Examiner’s construction is incorrect and does not take into full consideration the use of the terms “gateway” and “third party service provider” by Agee. While Agee does not specifically define the term, its definition can be taken from the context of its use. Agee discloses the following.

“A merchant 114 may forward the transaction information to a computer 22A at a third party service provider 22, such as a web-based provider or other”. [0045]

Accordingly, Third Party Service Provider receives transaction information from the merchant.

“The information may be transmitted through a computer 130A at a gateway 130, as illustrated in FIG. 1B, lines B and C, or directly to the third-party service provider computer 22A.” [0045]

Accordingly, the transaction information may be transmitted either to a gateway or directly to the Third Party Service Provider and, in the absence of a clear definition of the term in Agee, the Examiner is of the opinion that, Examiner is of the opinion Agee uses the term “gateway” as typically used in the art..

“The merchant's computer 14A, 114A or the third-party service provider computer 22A of FIG. 1B or other, may determine the amount of tax to be collected from the consumer. This determination may be made by the merchant's computer 14A, 114A, the third-party service provider computer 22A or other based on knowledge of the location of the consumer 12, location of the merchant 14, the tax laws of the various taxing entities 29 and predetermined distribution rules.” [0047]

Accordingly, the third party service provider may determine taxes owing.

“The third party service provider computer 22A or other forwards the credit-card and transaction information to a computer 125A at the appropriate credit-card association 125 (line D) and/or other CO.” [0050]

Accordingly, the Third Party Service Provider can transfer transaction information to the Credit Card association (Visa / MasterCard) or Card Association (bank).

“The response from the issuer bank computer is forwarded by the association's computer 125A to the third party service provider computer 22A (line G). The third party service provider computer 22A may then forward the response to the merchant's computer 114A through the gateway computer 130A (lines H and I), or may bypass the gateway 130 and transmit the response directly to the merchant's computer.” [0053]

Accordingly, the roles of gateway and Third Party Service Provider are differentiated and the Third Party Service Provider receives transaction information from the bank / Association, and sends it to the merchant, either through the gateway, or bypasses the gateway.

“The merchant 114 may transmit the credit-card and transaction information from his computer 114A to the computer 22A at the third party service provider 22 through the gateway computer 130A (lines J and K). Alternatively, the gateway 130 may be bypassed, and the information may be transmitted directly from the merchant's computer 114A to the third-party service provider computer 22A.” [0055]

Accordingly, the merchant can transmit credit card and transaction information to the Third Party Service Provider either via the gateway, or bypasses the gateway and sends the information directly to the Third Party Service Provider.

“Once the consumer adds the tip to the sale amount, the total sales amount is transmitted to the acquirer bank 21 (FIG. 2A), the third party service provider 22 (FIG. 2B) or other. The acquirer bank computer 21A (FIG. 2A) or the third party service provider computer 22A (FIG. 2B) forwards the credit card and transaction information to the computer 25A at the appropriate credit-card association 25, 125 and/or other card organization.” [0056]

Accordingly, transaction information (total sales amount) is transmitted to the Third Party Service Provider (amongst others), to be forwarded to the credit card association, or Card Association. Effectively, this is a derivative of para 50.

“In the embodiment illustrated in FIG. 2B, the response from the issuer bank computer may be returned to the merchant's computer 114A via the association 125, the third-party service provider 22 and the gateway 130, which may be bypassed in other embodiments.” [0058]

Accordingly, transaction response is forwarded from the issuer bank to the merchant via the Third Party Service Provider and the gateway, which may also be bypassed. Notice that the gateway serves a function distinct from that served by the Third Party Service Provider.

“In other embodiments, the tax calculation database or service may be located on a separate computer, such as one belonging to a third party service provider or other such as a clearinghouse” [0059]

Accordingly, the tax module may be located on the Third Party Service Provider, meaning the tax calculation is a function that can be provided by the Third Party Service Provider.

“For example, at the end of a day, shift, period or other, the merchant's computer 14A may transmit the individual or cumulative transaction information for that day, shift, period or other to a third party service provider or clearinghouse, and then to the acquirer bank, merchant's bank or other. In other embodiments, the gateway 30 may be bypassed.” [0060]

Accordingly, transaction information is forwarded to the Third Party Service Provider, and from there to the Acquirer bank, Merchant Bank, etc

“The central financial entity's computer 27A may then distribute the tax amounts to the various taxing entities banks 29, financial account entity or other according to the information provided by a third party service computer, or the merchant's computer 14A

(lines Y in FIG. 3A, block 426 in FIG. 4B) or other computer or server" [0065]

Accordingly, the Third Party Service Provider may contain tax payment information, and provide tax payment instructions for the distribution thereof.

"In other embodiments of the invention, other entities may be used as a distribution point for the taxing entities 29. For example, the computers 25A at various credit associations, third party service providers and/or other CO 25 may serve as the distributing entities." [0068]

Accordingly, the Third Party Service Provider appears to distribute tax payments to the taxing entities.

"In this embodiment, the merchant's computer 114A, at a time determined as described above with reference to FIG. 3A, may transmit the required information through the gateway computer 130A (which may be bypassed in other embodiments) to the third-party service provider computer 22A or other (lines R and S in FIG. 3B). The third-party service provider computer 22A may forward the information to a computer 26A at a tax service provider 26 (line T) for determination of the allocation of the tax funds to the appropriate taxing entities. The tax service provider computer 26A then returns the information, including tax distribution information, to the third-party service provider computer 22A (line U)." [0070]

Accordingly, the merchant transmits transaction information to the Third Party Service Provider, either through the gateway, or bypassing the gateway. The Third Party Service Provider then transmits the transaction information to the tax service provider.

"In other embodiments, the information may be transmitted directly from the merchant's computer 114A to the tax service provider computer 26A, bypassing either one or both of the gateway computer 130A and the third-party service provider computer 22A." [0070]

Accordingly, the gateway and the Third Party Service Provider may be bypassed, and the transaction information is transmitted directly from the merchant to the tax service provider.

"In further embodiments, the third-party service provider 22 and the tax service provider 26 may be a single entity, and the third-party service provider computer 22A and the tax service provider computer 26A may be a single unit." [0070]

Accordingly, the Third Party Service Provider and the tax service provider may be a single entity. In such a case, Applicants note that the third party service provider would be directly within the flow of financial information.

“The third-party service provider computer 22A then forwards a debit request, such as a settlement request or other, to the computers 125A at the appropriate credit-card associations 125 and/or other COs (line V).” [0070]

Accordingly, the Third Party Service Provider may forward the transaction information to the Credit Card association or other Card Organization.

“In other embodiments, as illustrated in FIG. 5B, a merchant 134 may use a computer 134A to transmit the transaction information to a computer 44A at a third-party service provider 44 (line AB in FIG. 5B). The third-party service provider computer 44A may forward the information to a computer 46A at a tax service provider 46 (line AC) for determination of tax allocation. The tax service provider computer 46A may then return the information, including the tax allocation information, to the third-party service provider computer 44A (line AD) for transmission to a computer 147A at a central financial entity 147 (line AE).” [0077]

Accordingly, the Merchant is transmitting transaction information to a Third Party Service Provider, which forwards the transaction information to a [separate and distinct] tax service provider. The tax service provider calculates the taxes and returns the information to the Third Party Service Provider

Para 77: “In other embodiments, the merchant's computer 134A may transmit the information to the third-party service provider 44A through a gateway computer (not shown). In further embodiments, the merchant's computer 134A may bypass the third-party service provider and transmit the information directly to the tax service provider computer 46A.” [0077]

Accordingly, Agee is clear that the information may be transmitted to the Third Party Service Provider via a gateway. This scenario is NOT shown in the illustration. However he is clear that this is a different embodiment. This is another indication that the Third Party Service Provider and the Gateway are two distinct elements and are not replaceable, one with the other.

“In still further embodiments, the third party service provider 44 and the tax service provider 46 may be a single entity, and the third party service provider computer 44A and the tax service provider computer 46A may be a single unit.” [0077]



Accordingly, the Third Party Service Provider and the tax service provider are the same entity.

“Thus, the central financial entity's computer 47A is able to transmit the distributions to the taxing entity banks 49 according to the calculations made either by the central financial entity's computer 47A, the merchant's computer 43A, a third party service provider (not shown) or other.” [0078]

Accordingly, the Third Party Service Provider may provide tax determination services.

“In other embodiments, as illustrated in FIG. 7B, a merchant 154 may use a computer 154A to transmit the transaction information, through a gateway computer 160A, to a computer 62A at a third-party service provider 62 (lines AH and AI in FIG. 7B). As noted above, the gateway 160 may be bypassed in other embodiments.” [0084]

Accordingly, the Third Party Service Provider receives transaction information from the merchant, either through a gateway, or directly, when the gateway is bypassed.

“The third-party service provider computer 62A may forward the information to a computer 64A at a tax service provider 64 (line AJ in FIG. 7B) for determination of allocation of tax funds to various taxing entities. The tax service provider computer 64A then returns the information, including the tax allocation information, to the third party service provider computer 62A (line AK in FIG. 7B), which forwards the information to a computer 161A at a debit clearing house 161.” [0084]

Accordingly, the Third Party Service Provider may forward the transaction information to a tax service provider, and after receiving the tax allocation information back from the tax service provider, the Third Party Service Provider forwards the information to a debit clearing house. However, the Third Party Service Provider must still retain its original functionality. As such, Third Party Service Provider of Agee is different than the instant Third Party Service Provider.

“In other embodiments, the merchant's computer 154A may bypass the third-party service provider 62 and transmit the information directly to the tax service provider computer 64A.” [0084]

Accordingly, the Third Party Service Provider may be bypassed, and the merchant will transmit the transaction information directly to the tax service provider.

“In further embodiments, the third party service provider 62 and the tax service provider 64 may be a single entity, and the third party service provider computer 62A and the tax

service provider computer 64A may be a single unit" [0084]

Accordingly, the Third Party Service Provider and the tax service provider may be a single entity.

"For other modes of payments, such as check cards, an acquirer computer and/or other third party service computer may be used to clear the transaction." [0085]

Accordingly, the Third Party Service Provider may function to clear the transactions.

"In the embodiment illustrated in FIG. 7B, the debit clearing house computer 161A may transfer the funds to the third-party service provider computer 62A (line AO in FIG. 7B)." [0086]

Accordingly, the Third Party Service Provider may receive funds from the debit clearing house.

"The third-party service provider computer 62A may transmit an approval signal to the merchant's computer 154A via the gateway computer 160A (lines AP and AQ in FIG. 7B)." [0086]

Accordingly, the Third Party Service Provider may transmit the approval response to the merchant via the gateway.

"The third-party service provider computer 62A may transmit the non-tax portion of the funds to a computer 163A at a merchant's bank 163 (line AR in FIG. 7B), and may forward the tax portion, along with tax distribution information, to a computer 167A at a central financial entity 167 (line AS in FIG. 7B) for distribution to the various taxing entity banks or financial account entities. It is understood that the third-party service provider computer 62A may bypass the central financial entity 167 and transmit the tax portion directly to the various taxing entity banks or financial account entities." [0086]

Accordingly, the Third Party Service Provider may split payments between non-tax payments, which will be transmitted by the Third Party Service Provider to the merchant, and the tax portion, which the Third Party Service Provider will transmit to the tax entity.

"A single central financial entity 767 having a computer 767A or a third party service provider computer or other may be used to distribute taxes to a plurality of taxing entity banks 769." [0092]

Accordingly, the Third Party Service Provider may be used to distribute taxes to the taxing entities.

Based upon the above, it is clear that the Third Party Service Provider of Agee functions to transmit transaction information on the path of the financial transaction, between the merchant / gateway and the processing institutions (the banks, debit card processor and the banks). From Applicants' knowledge of the financial transaction cycle, Agee's Third Party Service Provider is actually a "Payment Processor", as the term is used in the art.

A payment processor is a company (often a third party) appointed by a merchant to handle credit card transactions for merchant banks. A Payment Processor is defined as follows:

- "In electronic commerce, the firm that processes credit card transactions on behalf of a bank." "Business Dictionary" [<http://www.businessdictionary.com/definition/payment-processor.html>]

Payment Processes are usually categorized into two types: front-end and back-end. Front-end processors have connections to various card associations and supply authorization and settlement services to the merchant banks' merchants. Back-end processors accept settlements from front-end processors and, via The Federal Reserve Bank, move the money from the issuing bank to the merchant bank. In an operation that will usually take a few seconds, the payment processor will both check the details received by forwarding them to the respective card's bank issuing bank or card association for verification, and also carry out a series of anti-fraud measures against the transaction. Additional parameters, including the card's country of issue and its previous payment history, are also used to gauge the probability of the transaction being approved. Once the payment processor has received confirmation that the credit card details have been verified, the information will be relayed back via the payment gateway to the merchant, who will then complete the payment transaction. If verification is denied by the card association, the payment processor will relay the information to the merchant, who will then decline the transaction.

Applicants respectfully submit that the scope of service provided by Payment Processors most closely resembles and parallels the scope of services that Agee attributes to the Third Party Service Provider (in addition to the tax determination functions).

However, the following does not necessarily assume that the Third Party Service Provider is limited just to providing payment processing services. Applicants respectfully submit that,

regardless of what specific tasks the Third Party Service Provider provides, it cannot be Payment Processing Gateway services.

The payment processing gateway is typically used in an e-commerce environment. It is defined as follows:

- “In electronic commerce, the coding program that transmits an online customer's credit card order to and from an acquiring bank or the merchant account provider.” Business Dictionary [<http://www.businessdictionary.com/definition/payment-gateway.html>]; or
- “Payment Gateways connect a merchant to the bank or processor that is acting as the front-end connection to the Card Brands. They are called gateways because they take many inputs from a variety of different applications and route those inputs to the appropriate bank or processor.” PCI Compliance Guide [<http://www.pcicomplianceguide.org/pcifaqs.php>].
- Paypal defines a Payment Gateway as "It provides a secure connection between your online store and your internet merchant account." [[https://www.paypal.com/cgi-bin/webscr?cmd=\\_payflow-about-gateway-outside](https://www.paypal.com/cgi-bin/webscr?cmd=_payflow-about-gateway-outside)].
- Timothy Brandon specifically defines a "Payment Processing Gateway" as follows: "What is a Payment Processing Gateway? A payment gateway offers the link between an acquiring processor and merchants. The gateway gives merchants access for the authorization, settlement and management of credit, debit and other electronic transactions anytime, anywhere, via websites, at retail, and on wireless devices. The highly advanced payment gateways offer safe transactions through risk management and also provide fraud protection services to the bank" Private Label Payment Processing Gateway For Banks" By Timothy Brandon [<http://ezinearticles.com/?Private-Label-Payment-Processing-Gateway-For-Banks&id=4585574>].
- See also: "Private Label Payment Processing Gateway For Banks": "What is a Payment Processing Gateway? A payment gateway offers the link between an acquiring processor and merchants. The gateway gives merchants access for the authorization, settlement and management of credit, debit and other electronic transactions anytime, anywhere, via websites, at retail, and on wireless devices. The highly advanced payment gateways offer safe transactions through risk management and also provide fraud protection services to the bank. A payment gateway partner can also provide a variety of powerful online payment solutions to increase revenue, and improve profitability for the bank." [<http://kristencarter90.typepad.com/blog/2010/07/private-label-payment-processing-gateway-for-banks-1.html>].

The gateway is the equivalent of a physical point of sale terminal located in most retail outlets. Payment gateways protect credit card details by encrypting sensitive information, such as credit card numbers, to ensure that information is passed securely between the customer and the merchant and also between merchant and the payment processor. The payment gateway facilitates the transfer of information between a payment portal (such as a website, mobile phone or IVR service) and the Front End Processor or acquiring bank.

It should be noted that all of these references are much more recent references to the term "payment processing gateway" or "payment gateway" than the references cited by the Examiner, which date back to 2000 and 2001, a nascent period of online payment, with highly limited online transactions taking place because of the very issues raised in the Examiners references -- the lack of security in the online payment processing system which caused consumers to refrain from making purchases online. Only in 2001, as security of the online purchasing system increased did we witness a surge in online transaction and purchase activity. These definitions fall in line with the Examiner's references to gateway, in that a typical network / data gateway is an entrance / exit / connector between two, otherwise incompatible, data networks (with nodes residing on both networks, allowing for this point of connectivity. As such, the Payment Gateway is a connector between the merchant systems and the otherwise incompatible financial payment processing network. When stating that the Gateway can be bypassed, Agee recognized that there could be scenarios that the connector services are not required, situations where the merchant systems can communicate directly with the payment processing network. However, such recognition does not mean that the Third Party Service Provider assumes the role of the payment processing gateway.

Applicants respectfully submit that Agee's Third Party Service Provider does not properly function as a payment gateway. The various embodiments of Agee as detailed above demonstrate that while the Third Party Service Provider might communicate directly with Merchant computer, the Tax Service Provider computer and the financial network, the Third Party Service Provider must still provide other services/functions not provided by the instant Payment Processing Gateway. These include:

- Para 47: determining the amount of tax to be collected;
- Para 50: determining of which credit card association and/or other Card Organization to send the transaction information (see also para 56);
- Para 59: containing the tax calculation database;
- Para 65: distributing tax proceeds to the taxing agencies (see also paras 68 & 92);
- Para 70: containing the tax service provider module (see also para 78);
- Para 85: clearing the transaction;
- Para 86: receiving funds from the debit clearing house;
- Para 86: differentiating between payment types, sending tax payments to the taxing

agencies, and non-tax payments to the merchant

Accordingly, even when the “gateway” of Agee is bypassed and the Third Party Service Provider communicates directly with the Merchant computer and the financial network, the Third Party Service Provider must still provide important functions not provided by the gateway and the Third Party Service Provider still remains within the direct flow of transaction information. As previously noted, the instant third party service provider does not communicate directly with the merchant computer or the financial network and thus is not within the direct flow of transaction information.

Applicants note that Examiner defines a payment gateway as an element that "validates and obtains credit card authorization and processes settlement". However this definition does not agree with all of the references cited above defining the payment gateway, according to which, the gateway provides a secure point of connectivity between the merchant site and the Payment Processor (the first node in the financial payment network).. Throughout his application, Agee describes the task of the Third Party Service Provider as a function of transferring transaction information from one element to another. Agee does allow for additional functionality to be attributed to the Third Party Service Provider (specifically, that of determining taxes), however nowhere does Agee state that the Third Party Service Provider provides the 'secure point of connectivity between the merchant site and the Payment Processor', the industry accepted definition of a Payment Gateway.

As the Examiner stated during the telephone interview, Examiner had to rename the elements (thereby resulting in improperly reassignment of functionality not suggested) in Agee's illustrations in order to read that Agee's Third Party Service Provider can also function as a Payment Gateway. Taking Examiner's logic to the next step, any component that transmits transaction data, including ethernet cables and routers, would be equated with a Payment Processing Gateway, which would obviously void any function of substance that the market attributes to gateway services ('providing a secure point of connectivity between the merchant site and the Payment Processor').

To the contrary, while Agee is very careful to provide different permutations of what services the Third Party Service Provider can provide (connector to the tax module, function as the tax connector, etc), he never once mentions that the Third Party Service Provider and the Payment Gateway can be the same entity (language that he does use when stating that the Third

Party Service Provider can also contain the tax determination module). When he states that the Merchant can transmit transaction data directly to the Third Party Service Provider, he very explicitly says that this "bypasses" the gateway (not - transmits directly to the Third Party Service Provider, that may contain the gateway module"). The only reason is that he recognizes that not in all instances a merchant will require the services of a gateway, specifically a "secure point of connectivity between the merchant site and the Payment Processor". For example, the Payment Processor may be hosting certain elements the merchant site (such as the payment form pages), a situation where the merchant site is then communicating directly with the Payment Processor, thus negating the need for gateway services.

As such, the only conclusion that can be drawn is that Agee's Third Party Service Provider and Payment Gateway must be distinct entities and the Third Party Service Provider does not and cannot assume the functionality of the gateway while also relinquishing its own functionality.

Applicants respectfully submit that the alternate embodiment of FIG. 7B as described by Examiner still places the Third Party Service Provider in the direct flow of transaction information regardless of the absence of the gateway. Moreover, the Third Party Service Provider in this embodiment must also retain other functionality not provided by the Tax Service Provider. In comparing Agee's alternate embodiment to the language of claim 1, Applicants submit that Agee's Tax Service Provider is more akin to Applicants' Third Party Fee Calculation Logic Engine and Agee's Third Party Service Provider is more akin to Applicants' financial network (more specifically, the first node within the financial network, or a Payment Processor). In such a reading, the instant Payment Processing Gateway would be missing in Agee. Agee specifically references the Third Party Fee Fulfillment engine: in some embodiments it is the Third Party Tax Calculation element and in other embodiments it is the Third Party Service Provider; however, it is never part of the Gateway.

Applicants respectfully submit that the instant claimed invention is not merely a reorganization of well known elements with not resulting advantage. By virtue of the specific flow of information and functionality divided among the various elements in the instant claims, the instant invention allows implementation of a tax engine before the transaction information enters into the financial network. This means that the tax engine does not have to be configured according to the highly complex and stringent standards and protocols which govern

communications within the financial networks. This simplifies development and implementation tremendously. Furthermore, by extracting the tax engine from the critical path of flow of financial authorization and fulfillment information, a crash of the tax system will not result in a crash of the financial network, and the general flow of payment authorization and fulfillment, which means that banks and credit card companies will be more receptive to the implementation. Finally, by placing the system in the gateway, we get more information from the merchant, information which may be critical for the accurate determination of taxes, and information which may be filtered / not passed through into the payment authorization / fulfillment channels

Applicants respectfully submit that, without motivation to do so, the structure and function of one element of the prior art cannot be assumed as being replaceable with that of another element of the same prior art when the art specifically assigns a different structure and function to each element. Applicants believe that Agee fails to suggest or disclose that the third party provider can or should assume the structure and function of the payment processing gateway when the payment processing gateway is bypassed. Accordingly, in the alternate embodiment of Agee wherein the payment processing gateway is bypassed, there is no teaching in Agee to suggest that the Third Party Service Provider can assume the roles of the payment processing gateway and rescind its own roles. Where both prophetic embodiments place the third party provider as an intermediary, the instant claims preclude such an embodiment.

Applicants prior arguments of record regarding Sullivan are equally applicable and are not reiterated herein. Applicants submit that the prophetic combination of Sullivan and Agee might result in a third party fee payment system; however, such a system would not possess the specific construction, connectivity and functionality of the claimed invention, because Sullivan does not provide with Agee is missing. Specifically, Sullivan does not provide the embodiment wherein the payment processing gateway is present, the third party service provider is present and the third party service provider does not communicate directly with the Servant, Merchant or financial network computers.

#### *Claims 21-24*

With regard to claim 21, Applicants' prior arguments of record are equally applicable here as well. Examiner acknowledges that Sullivan et al. does not disclose or suggest "wherein the tax system components are divided in the manner specified in claim 21" and then argues that Sullivan discloses division of the logic engines of its system and relies upon Agee et al. as



suggesting that “the third party service provider 62 system can be regarded as a payment processing gateway.” Moreover, Sullivan et al. does not disclose or suggest a transaction client logic engine that is “adapted to receive from a third party fee fulfillment client logic engine one or more information data packets comprising authorization and fulfillment data for the transfer of funds and to transmit said one or more information data packets to the payment processing gateway.” This is because the third party service provider of Agee et al. transmits the data directly to the financial network rather than back to the payment processing gateway.

With regard to claim 22, Applicants’ prior arguments of record are equally applicable here as well. The prophetic combination of Sullivan et al. and Agee et al. fails to suggest a third party fee calculation client logic engine wherein said logic engine receives “one or more information packets from a transaction client logic engine, said one or more information packets from the transaction client logic engine having been transmitted to the transaction client logic engine by a **payment processing gateway**” and transmits “to the transaction client logic engine, to a third party fee fulfillment client logic engine, or to a payment processing gateway a transaction data information packet including said third party fees owed.” The system of Sullivan et al. fails to disclose the specified pathway and information content.

With regard to claim 23, Applicants’ prior arguments of records are equally applicable here as well. The prophetic combination of Sullivan et al. and Agee et al. fails to suggest such a logic engine wherein said logic engine “determines the third party fees owed on a transaction between the first and the second party; provides authorization and fulfillment data for the third party fees owed on the transaction between the first and the second party; and transmits to a payment processing gateway or the transaction client logic engine one or more information data packets comprising authorization and fulfillment data for the transfer of funds.” The system of Sullivan et al. fails to disclose the specified pathway and information content.

Applicants respectfully remind Examiner that the proper analysis for determining patentability under 35 U.S.C. 103(a) is whether or not the art motivates an artisan to modify one disclosure with another to arrive at the invention claimed, in other words, whether or not Sullivan, as the primary reference, suggests or discloses to the artisan that Sullivan’s disclosure **should be** combined with that of Agee, **not** whether or not the disclosure of Sullivan **could be** combined with that of Agee. Moreover, the teachings and **expectation of success** in combining the art must come from the art. (see prior case law citations)

Applicants respectfully submit that this rejection has been overcome and request that it be withdrawn.

In view of all the foregoing, Applicants respectfully submit that they have made a diligent effort to place the application in form for allowance. An early notice thereof is respectfully requested.

Respectfully submitted,

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